

EXHIBIT 2

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EXHIBIT 2

2714429AMG.txt

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09:34:28 3 THE VIDEOGRAPHER: Good morning. We are
09:34:29 4 going on the record at 9:34, on September 22 of the
09:34:35 5 Year 2017. Please understand microphones are very
09:34:42 6 sensitive, and they may pick up whispering ad
09:34:44 7 private conversations and cellular interference.

09:34:49 8 Please turn off your cell phones or place
09:34:51 9 them away from the microphones, as they may
09:34:54 10 interfere with the audio. Audio and video recording
09:34:57 11 will continue to take place unless all parties agree
09:35:01 12 to go off of the record.

09:35:03 13 This is Disc 1, Volume I in the video
09:35:06 14 deposition of Michael J. Wagner, taken by counsel
09:35:10 15 for Defendants in the matter of Waymo LLC v. Uber
09:35:16 16 Technologies. It's filed in the United States
09:35:19 17 District Court, for the Northern District of
09:35:21 18 California, Case No. 17-cv-00939-WHA.

09:35:29 19 This is being taken at Morrison &
09:35:31 20 Foerster. They're at 425 Market Street in
09:35:35 21 San Francisco. My name is Kevin Foor, and I am here
09:35:40 22 with Mary Goff-Sharma, and we are from Veri text.
09:35:45 23 I'm not related to any party nor am I financially
09:35:49 24 interested in the outcome in any way.

09:35:52 25 Counsel and -- and all present in the

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12:08:16 23 Otto Trucking LLC. Do you know who Otto Trucking
12:08:18 24 is?
12:08:19 25 A I do.

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12:08:20 2 Q Who is Otto what's your understanding of
12:08:22 3 what Otto Trucking is?
12:08:23 4 A Well, I -- I believe it's a company that's
12:08:25 5 owned by -- principally owned by Mr. Levandowski and
12:08:32 6 Lior.
12:08:34 7 And it is in -- has signed an -- an
12:08:37 8 acquisition of purchase agreement with Uber where it
12:08:43 9 it's Uber's discretion to purchase that company
12:08:46 10 between now and sometime in November. And it is a
12:08:49 11 company that is focused on applying LiDAR technology
12:08:53 12 to trucks.
12:08:56 13 Q Do you know whether Otto Trucking has any
12:08:58 14 employees?
12:08:59 15 A Well, my understanding is they do not at
12:09:01 16 least from the last facts that I have.
12:09:04 17 Q Do you have any understanding of as to
12:09:04 18 whether Otto Trucking does any research and
12:09:07 19 development activities?
12:09:12 20 A I -- I I don't know whether they do or not
12:09:16 21 I understand that Uber is advancing development
12:09:18 22 funds to them. So I -- I would think they do. But
12:09:22 23 whether that's done with actually being done by Uber
12:09:26 24 and not your client, I don't know.

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12: 09: 29 25 Q Okay. You're not offering any opinions in

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12: 09: 31 2 this case as to any damages caused to Waymo specific

12: 09: 36 3 to oath Otto Trucking; is that right?

12: 09: 38 4 A That's correct.

12: 09: 38 5 Q Okay. And so then your damages -- I'm

12: 09: 44 6 going to walk through briefly -- not in the level of

12: 09: 46 7 detail that Uber's counsel did -- but I just want to

12: 09: 48 8 walk through your principal opinions in this case.

12: 09: 50 9 You have offered two unjust enrichment

12: 09: 55 10 unjust enrichment calculations and a reasonable

12: 09: 58 11 royalty measure, correct?

12: 10: 00 12 A That's fair.

12: 10: 01 13 Q Okay. The first unjust enrichment measure

12: 10: 05 14 values the accelerated development to -- that Uber

12: 10: 10 15 was able to achieve through the alleged

12: 10: 13 16 misappropriation of these nine trade secrets, right?

12: 10: 16 17 A Yes.

12: 10: 17 18 Q And -- and your opinion -- that -- we'll

12: 10: 20 19 call that your first unjust enrichment opinion.

12: 10: 24 20 That opinion is based upon internal Uber

12: 10: 28 21 documents showing some accelerated development,

12: 10: 31 22 correct?

12: 10: 32 23 A That's fair.

12: 10: 34 24 Q That opinion is not based upon any Otto

12: 10: 36 25 Trucking documents; is that right?

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12:16:07 8 that word -- the caveats you're referring to
 12:16:09 9 regarding the applicability of your unjust
 12:16:12 10 enrichment damage theories, those caveats are Uber
 12:16:17 11 acquires Otto Trucking and that Uber shares some of
 12:16:21 12 the technology it's developing using the allegedly
 12:16:25 13 misappropriated trade secrets with Otto Trucking; is
 12:16:28 14 that right?

12:16:28 15 A That's -- that's -- again, that's my
 12:16:30 16 conclusion -- or that would be my opinion as a
 12:16:33 17 damages expert.

12:16:33 18 Q If both of those assumptions are true,
 12:16:36 19 then your damages opinions -- your unjust enrichment
 12:16:39 20 damages opinions may have some applicability to Otto
 12:16:41 21 Trucking, correct?

12:16:44 22 MR. EISEMAN: Objection as to form.

12:16:44 23 A That's fair.

12:16:49 24 Q (BY MR. BERRY) You also have a reasonable
 12:16:53 25 royalty rate calculation. And that measures the

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12:16:55 2 amount that Uber would have agreed to pay Waymo in
 12:16:58 3 this hypothetical negotiation set in the --
 12:17:01 4 somewhere in the December 15 -- August -- between
 12:17:05 5 December '15 and August 2016 time period, right?

12:17:09 6 A Correct?

12:17:09 7 Q You didn't do any separate calculation of
 12:17:11 8 the amount that Otto Trucking would have agreed to
 12:17:15 9 pay Waymo at a hypothetical negotiation set during

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12:17:20 10 that same time period, correct?

12:17:22 11 A That is accurate.

12:17:23 12 Q Okay. And then for the reasonable royalty
12:17:25 13 calculation that you did, you start with a baseline
12:17:28 14 of Uber's unjust enrichment. And then you adjusted
12:17:32 15 upward based on some analysis you have done of
12:17:36 16 certain of the Georgia-Pacific factors. Namely 4,
12:17:38 17 5, 6, 8, and 11, correct?

12:17:42 18 A Those are the only ones that had any
12:17:45 19 impact on changing the number from the baseline.
12:17:47 20 That is correct.

12:17:48 21 Q And -- and Factor 5 -- this is addressed
12:17:52 22 in your report at paragraphs 399 to 401 -- that --
12:17:55 23 that factor deals with the commercial relationship
12:17:58 24 between Waymo and Uber and some documents that you
12:18:02 25 referred regarding the -- the potential competitive

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12:18:08 2 relationship between those two companies, right?

12:18:10 3 A Yes.

12:18:11 4 Q That analysis in Factor 5 is -- is
12:18:13 5 inapplicable to -- to my client Otto Trucking --

12:18:16 6 A Yeah --

12:18:16 7 Q -- right?

12:18:16 8 A -- as discussed in my report, that is
12:18:19 9 correct.

12:18:20 10 Q Right. And -- and Factor 8 deals with
12:18:25 11 expected future profitability. And you analyzed

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12:20:30 16 Q So as we sit here today based on the work
 12:20:33 17 you have done so far up to and including today, you
 12:20:36 18 don't have an opinion of what damages Waymo would be
 12:20:39 19 entitled to under that hypothetical verdict --
 12:20:41 20 MR. EISEMAN: Objection.
 12:20:41 21 Q -- is that fair (talking over each other
 12:20:42 22 -- check *)?
 12:20:43 23 MR. EISEMAN: Objection as to form.
 12:20:43 24 A I do not.
 12:20:44 25 Q (BY MR. SCHUMAN) In -- in response to some

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 12:20:50 2 of the questions you got from Uber's counsel, you --
 12:20:55 3 you mentioned that you personally spent
 12:20:58 4 approximately 64 hours total working on -- working
 12:21:01 5 on your opinions in this case. Obviously, your
 12:21:04 6 staff spent many more hours than that.

12:21:06 7 Approximately what percentage of your
 12:21:09 8 64 hours, Mr. Wagner, did you spend focusing on
 12:21:14 9 calculating damages specific to my client, Otto
 12:21:16 10 Trucking?

12:21:17 11 A Zero.

12:21:25 12 Q Just bear with me a second.

12:21:27 13 A But I could approximate -- it's exactly
 12:21:31 14 64.0 hours through September 15. And it's been 13.4
 12:21:39 15 hours since then before today

12:21:39 16 Q I would --

12:21:40 17 A -- between September 15 and today (talking
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